

Internal Revenue Service
District Director

Department of the Treasury

Date: March 27, 1997

Form Number:

990

Tax Period:

UZZ

901.04-07

In Reply Refer to:

Person to Contact:

Contact Telephone Number:

Dear Sir or Madam:

We have enclosed a copy of our examination report explaining why we believe an adjustment to your organization's exempt status is necessary.

If you do not accept our findings, you may appeal the proposed adverse determination through our office to the Office of the Regional Director of Appeals. To request Appeals consideration, you should follow the instructions in the enclosed Publication 892. We will then forward your request to the Office of Regional Director of Appeals. If you request a hearing, they will contact you to arrange a mutually convenient time and place. When you write, please provide your daytime telephone number and most convenient time for us to call in case we need to contact you.

You may also request that we refer this matter to the National Office for technical advice, as explained in Publication 892. If a determination letter is issued to you based on technical advice from the National Office, no further administrative appeal is available to you within the Service on the issue that was the subject of technical advice.

If you accept our findings, you do not need to take further action. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the examination report and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with your key District Director for exempt organization matters within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,



Paul M. Harrington
District Director

Enclosures:

Examination Report
Publication-892
Envelope
Caveat

Letter 1433(DO)(5-85)

CAVEAT

The proposed date of revocation of exemption is

Upon revocation of exemption, the filing requirements for the organization will be Form 1120 or Form 1120-H beginning with the year ending No filing of Form 1120 or Form 1120-H will be required for years prior to

Form 886-A	EXPLANATION OF ITEMS	Exhibit or Schedule
Name of Taxpayer		Year/Period Ended

ISSUE:

Whether the organization formed as a homeowners' association, to preserve and enhance the natural beauty of properties of the members by regulation, advance civic welfare of the community by protecting the property, enforce deed restrictions and zoning ordinances, and make available facilities for the enjoyment of all properties and to promote health, welfare, pleasure, recreation and entertainment, continues to qualify for exemption under section 501(c)(4) of the Internal Revenue Code.

FACT:

The organization was incorporated on _____ Exemption under section 501(c)(4) of the Code was recognized in a determination letter dated _____

The organization is an island (key) which is connected to other islands and the City of _____ by a 4-lane causeway. It is separated from the causeway by a masonry wall which has an entrance to the community with a detached 3-room guard house and office. The wall and building is the only property owned by the organization.

The community is composed of 511 lots of which only 11 lots have no structure build upon them. The organization maintains the entrance to the property and wall on the exterior of the subdivision. The city maintains the streets. There is a yacht club in the community which is not owned but used by the organization for meetings for a fee.

The organization enforces deed and zoning restrictions, preserves and enhances the natural beauty of the properties of the members by enforcing the regulations set up by its members, and provides a 24-hour a day security guard service for its members. The organization sends out monthly news letters to its members, sells license plates with the organizations logo to its members, and allows the members to use the office copy machine for a fee. Each member (household/lot) pays a membership fee. Also, there is a fee for any application submitted for approval of all structural changes.

LAW:

Section 501(c)(4), of the Internal Revenue Code, provides for the exemption from federal income tax of organizations which are not organized for profit, but operated exclusively for the promotion of social welfare, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

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Section 1.501(c)(4)-1(a)(2), of the Income Tax Regulations, provides that social welfare is operating exclusively for the promotion of social welfare, if it is primarily engaging in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purposes of bring about civic betterment and social improvement.

Revenue Rule 71-102, 1972-1 C.B. 149, holds that a nonprofit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents qualifies for exemption under section 501(c)(4) of the Code. It reads in part, as follows: "For the purposes of section 501(c)(4) of the Code, a neighborhood, precinct, subdivision, or housing development constitute a community."

Revenue Rule 74-99, 1974-1 C.B. 131, provides three criteria for a homeowners' association to qualify for exemption under section 501(c)(4) of the Code:

1. It must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental;
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

Revenue Rule 77-273, 1977-2 C.B. 194, provides that if the main (or sole) activity of the organization were the providing of security services to its members for a fee may also disqualify the organization from exemption under section 501(c)(4) of the Code.

RATIONALE:

The organization's activities, at the time of incorporation and submission of their application for exemption from federal income tax under section 501(c)(4) of the Code, were in compliance with the provisions of the Code.

It appears that, as the organization (community) grew, they lost sight of the items specifically listed as the organization's purposes which are stated in their articles of incorporation, and how it would affect their tax exempt status.

The streets in the community are not owned and maintained by the organization, but are owned and maintained by the city and are therefore open to the public.

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There are no common areas or facilities owned by the organization which could be used and enjoyed by the surrounding communities (the general public).

The organization's main activity is the security guard service provided for its members.

It is therefore, proposed that the exempt status of this organization be revoked effective